

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 512

Introduced by Dw. Pedersen, 39

Read first time January 17, 2003

Committee: Judiciary

A BILL

1 FOR AN ACT relating to relating to abortion; to amend section
2 28-101, Revised Statutes Supplement, 2002; to restrict or
3 prohibit the use of human fetal tissue as prescribed; to
4 harmonize provisions; to provide a duty for the Revisor
5 of Statutes; to provide severability; and to repeal the
6 original section.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. The Legislature hereby finds and declares
2 that:

3 (1) It is the longstanding public policy of the State of
4 Nebraska to provide protection for the life of an unborn human
5 child whenever possible;

6 (2) The United States Supreme Court has stated:

7 (a) The United States Constitution, as interpreted in Roe
8 v. Wade, 410 U.S. 113 (1973), and Maher v. Roe, 432 U.S. 464
9 (1977), implies no limitation on the authority of a state to make a
10 value judgment favoring childbirth over abortion and to implement
11 that authority by the allocation of public funds;

12 (b) The decision of a state to favor childbirth over
13 abortion through the allocation of public funds does not violate
14 Roe v. Wade. A state may implement that same value judgment
15 through the allocation of other public resources. Nothing in the
16 Constitution of the United States requires states to enter or
17 remain in the abortion business. Webster v. Reproductive Health
18 Services, 492 U.S. 490 (1989); and

19 (c) A state may, consistent with the United States
20 Constitution, selectively fund a program to encourage certain
21 activities it believes to be in the public interest, without at the
22 same time funding an alternative program which seeks to deal with
23 the problem in another way. Rust v. Sullivan, 500 U.S. 173 (1991);

24 (3) Activities undertaken by the state or its
25 instrumentalities that are dependent upon supplies of human fetal
26 tissue that cannot be obtained but for induced abortions have the
27 following effects:

28 (a) These activities place the state in an unavoidable

1 entanglement with abortion providers in that the state must develop
2 direct or indirect relationships with such providers in order to
3 obtain a supply of human fetal tissue; and

4 (b) These activities make the state dependent upon the
5 existence of future induced abortions in that the use of such human
6 fetal tissue cannot take place unless induced abortions occur from
7 which such tissue can be supplied;

8 (4) The effects set forth in subsection (3) of this
9 section are contrary to the longstanding public policy of providing
10 protection for the life of an unborn child wherever possible; and

11 (5) Pursuant to Article III of the Constitution of
12 Nebraska, the Legislature has authority, subject only to initiative
13 and referendum and constitutional prohibitions, to appropriate and
14 set conditions upon the use of state funds and to make general law
15 regarding the use of state facilities and resources.

16 Sec. 2. For purposes of sections 1 to 4 of this act:

17 (1) Human fetal tissue means human fetal tissue, cells,
18 or organs that are obtained from a living or dead unborn human
19 child;

20 (2) Human fetal tissue from an induced abortion means
21 human fetal tissue obtained from a living or dead unborn child
22 during or after an induced abortion, unless the human fetal tissue
23 is demonstrated to have been obtained from an abortion induced
24 prior to the effective date of this act. Human fetal tissue from
25 an induced abortion does not mean human fetal tissue from a
26 spontaneous abortion or an ectopic pregnancy; and

27 (3) Use of human fetal tissue from an induced abortion
28 means (a) any use of human fetal tissue from an induced abortion

1 except (i) performance of an abortion as defined in section 28-326,
2 (ii) the removal of aborted children from their mothers, (iii)
3 treatment of a living, unborn child, (iv) an autopsy on or
4 pathological testing of a dead, unborn child, or (v) research
5 concerning the safety of abortions and (b) any use of material
6 grown, derived, or cultured from human fetal tissue from an induced
7 abortion unless the human fetal tissue is demonstrated to have been
8 obtained from an abortion induced prior to the effective date of
9 this act.

10 Sec. 3. (1) No person employed by the state or any
11 agency or political subdivision of the state shall, within the
12 scope of his or her employment, use human fetal tissue from an
13 induced abortion.

14 (2) No public institution, public facility, public
15 equipment, or other physical asset owned, leased, or otherwise
16 controlled by the state or any agency or political subdivision of
17 the state shall be used for the use of human fetal tissue from an
18 induced abortion.

19 (3) No funds received or controlled by the state or any
20 agency or political subdivision of the state, including, but not
21 limited to, funds from federal, state, or local taxes, gifts, or
22 grants from any source, public or private, shall be expended for
23 use of human fetal tissue from an induced abortion. Funds used for
24 (a) operation or maintenance of facilities or equipment used for
25 use of human fetal tissue from an induced abortion or (b)
26 supporting personnel performing administrative or clerical
27 functions on behalf of individuals engaged in the use of human
28 fetal tissue from an induced abortion shall be considered expended

1 for use of human fetal tissue from an induced abortion.

2 (4) The prohibitions in this section shall not apply to
3 use by private entities of physical assets or facilities provided
4 to the public at large, such as utilities, including water supply.

5 Sec. 4. The Attorney General may maintain an action in
6 district court against any person or entity who has violated
7 section 3 of this act to obtain an injunction against future
8 violations of such section or for civil contempt against any person
9 or entity who has intentionally violated an injunction issued in
10 accordance with this section. If judgment is rendered in favor of
11 the defendant and the court finds that the suit by the Attorney
12 General was frivolous and brought in bad faith, the court shall
13 also render judgment for reasonable attorney's fees in favor of the
14 defendant against the Attorney General.

15 Sec. 5. (1) Any person who knowingly acquires, receives,
16 or otherwise transfers any human fetal tissue for valuable
17 consideration is guilty of a Class IV felony.

18 (2) Any person who solicits or knowingly acquires,
19 receives, or accepts a donation of human fetal tissue for the
20 purpose of transplantation of such tissue into another person, if
21 the tissue will be or is obtained pursuant to an induced abortion
22 and (a) the donation will be or is made pursuant to a promise to
23 the donating individual that the donated tissue will be
24 transplanted into a recipient specified by such individual, (b) the
25 donated tissue will be transplanted into a relative of the donating
26 individual, or (c) the person who solicits or knowingly acquires,
27 receives, or accepts the donation has provided valuable
28 consideration for the costs associated with such abortion, is

1 guilty of a Class IV felony.

2 (3) For purposes of this section:

3 (a) Human fetal tissue means human fetal tissue, cells,
4 or organs that are obtained from a living or dead unborn human
5 child; and

6 (b) Valuable consideration does not include reasonable
7 payments associated with the transportation, implantation,
8 processing, preservation, quality control, or storage of human
9 fetal tissue.

10 Sec. 6. Section 28-101, Revised Statutes Supplement,
11 2002, is amended to read:

12 28-101. Sections 28-101 to 28-1348 and section 5 of this
13 act shall be known and may be cited as the Nebraska Criminal Code.

14 Sec. 7. The Revisor of Statutes shall assign sections 1
15 to 4 of this act to Chapter 71, article 69.

16 Sec. 8. If any section in this act or any part of any
17 section is declared invalid or unconstitutional, the declaration
18 shall not affect the validity or constitutionality of the remaining
19 portions.

20 Sec. 9. Original section 28-101, Revised Statutes
21 Supplement, 2002, is repealed.